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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**Plaintiff’s Motion for an Order  
Appointing a Tax Administrator and a  
Distribution Agent and Authorizing the  
SEC to Approve and Arrange Payment of  
the Tax Obligations of the Distribution  
Fund, and Administrative Fees and  
Expenses, Without Further Court Order**

This Document Relates To:

*U.S. SEC v. Volkswagen AG*,  
No. 3:19-cv-1391 CRB

Date: 11/22/2024

Time: 10: 00 a.m.

Judge: The Honorable Charles R. Breyer

**NOTICE OF MOTION AND MOTION**

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the plaintiff, the Securities and Exchange Commission (the “SEC”), filed and noticed the above-entitled motion (the “Motion”) for a hearing on November 22, 2024, at 10:00 a.m., before the Honorable Charles R. Breyer, Courtroom 6 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102.

By the Motion, the SEC seeks an Order with respect to the distribution of funds paid pursuant to the Final Judgment as to VW Group of America Finance, LLC (“VWGoAF”), ECF SEC’s Motion to Appoint a Tax Administrator, Distribution Agent, and Related Relief

3:19-cv-1391-CRB

No. 137 (the “Distribution Fund”): (i) appointing Heffler, Radetich & Saitta, LLP (“HRS”), a certified public accounting firm with an office in Philadelphia, PA, as tax administrator of the Distribution Fund, to implement all income tax reporting requirements of the Distribution Fund; (ii) appointing KCC Class Action Services, LLC (“KCC”), a full-service distribution administration and project management consulting firm, as distribution agent, to assist in developing a plan of distribution and to administer the distribution of the Distribution Fund; and (iii) authorizing the SEC to approve and arrange payment of the tax obligations and all administrative fees and expenses from the Distribution Fund without further Court Order.

By email dated October 14, 2024, counsel for Volkswagen Group of America Finance, LLC informed the undersigned that her client does not object to the relief sought by this motion.

### **MEMORANDUM**

As a first step toward distributing payments to affected investors, the SEC respectfully moves this Court for an Order with respect to the Distribution Fund: (i) appointing HRS, a certified public accounting firm with an office in Philadelphia, PA, as tax administrator of the Distribution Fund to implement all income tax payments and reporting requirements of the Distribution Fund; (ii) appointing KCC, a full-service distribution administration and project management consulting firm, as distribution agent, to assist in developing a plan of distribution and to administer the distribution of the Distribution Fund; and (iii) authorizing the SEC to approve and arrange for payment of the tax obligations and all administrative fees and expenses from the Distribution Fund without further Court Order (the “Motion”). The requested relief is necessary to begin the process of distributing the approximately \$49 million Distribution Fund to affected investors.

**I. Issues to be Decided**

Whether the Court should issue an Order appointing HRS, a certified public accounting firm as tax administrator of the Distribution Fund; appointing KCC as distribution agent; authorizing the SEC to approve and arrange for payment of the tax obligations and all administrative fees and expenses from the Distribution Fund without further Court Order.

**II. Background**

On March 14, 2019, the SEC filed a Complaint against Volkswagen Aktiengesellschaft, Martin Winterkorn, Volkswagen Group of America Finance, LLC (“VWGoAF”), and VW Credit, Inc. (the “VW Defendants”), alleging violations of the federal securities laws. ECF No. 1. On April 3, 2024, the Court entered a final judgment by consent against VWGoAF (the “Final Judgment”), ordering, in relevant part, VWGoAF to disgorge \$34,350,000 and pay prejudgment interest of \$14,400,000, for a total payment of \$48,750,000. ECF No. 137. Under the Final Judgment, the SEC will hold the funds paid in an account at the United States Treasury and may propose a plan to distribute the funds to investors harmed by the violations, subject to this Court’s approval. Also on April 3, 2024, upon the SEC’s Stipulation of Dismissal, the Court dismissed with prejudice all claims against Volkswagen Aktiengesellschaft and Martin Winterkorn. ECF. No. 138.

VWGoAF has paid the monetary judgment in full. The SEC holds \$48,750,000.00, comprising the Distribution Fund, in an SEC-designated account with the United States Department of the Treasury pending distribution to affected investors pursuant to a distribution plan to be approved by this Court. Interest accrued in the account will be added to, and become a part of, the Distribution Fund.

### III. Discussion of the Relief Requested

As set forth above, the Distribution Fund holds approximately \$50 million. As discussed in further detail below, in anticipation of proposing a distribution plan to this Court for the distribution of funds to affected investors, the SEC now seeks the appointment of a tax administrator to ensure that the Distribution Fund complies with all tax obligations; the appointment of a distribution agent to oversee the distribution of funds; and authorization for SEC staff to approve and arrange for the payment of tax obligations and administrative fees and expenses from the Distribution Fund without further Court Order.

#### A. The Court Should Appoint HRS as Tax Administrator for the Distribution Fund.

The Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A tax administrator for the Distribution Fund/QSF should be appointed and authorized to take all necessary steps to enable the Distribution Fund to obtain and maintain the status of a taxable QSF. The reasonable costs, fees, and other expenses incurred in the performance of the tax administrator’s duties will be paid from the Distribution Fund.

The SEC recommends the appointment of HRS as tax administrator for the QSF. HRS is experienced in the taxation of QSFs and has agreed to reasonable fees for its services.<sup>1</sup> In

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<sup>1</sup> HRS is one of the firms that the SEC has engaged to render tax consulting services for QSFs established in administrative proceedings for calendar years 2022 through 2024 at agreed upon rates. *See* Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-by-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022). As part of HRS’s engagement with the SEC, HRS has agreed to render those same services at the agreed upon rates for any QSF for which it is appointed to serve as the tax administrator during calendar years 2022 through 2024, including appointments made by a Court in civil actions brought by the SEC in federal district court.

summary, HRS will provide the following services for a fixed fee of \$2,000 under the circumstances in this case:

- (a) obtain a federal employer tax identification number for the QSF;
- (b) prepare and file federal and state income tax returns, as required;
- (c) when required, calculate quarterly estimated tax payments, and provide information to the SEC so that payments may be made timely;
- (d) make arrangements with the SEC staff to pay the tax liability of the QSF;
- (e) calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and/or late payment of taxes;
- (f) determine and comply with information reporting obligations of the QSF for payments to vendors; and
- (g) all administrative tasks necessary to the foregoing services.

Additional tax compliance services would be provided at the SEC's request and billed in accordance with HRS's agreement with the SEC.

By the proposed Order, HRS will execute all income tax reporting obligations of the Distribution Fund, including the preparation and filing of tax returns and compliance with the Foreign Account Tax Compliance Act. At the completion of the distribution, HRS, in coordination with the Court-appointed distribution agent, will prepare a final report and final accounting for filing with the Court.

HRS has served as a tax administrator for numerous QSFs requiring similar compliance to that required of the Distribution Fund. The SEC staff respectfully requests that the Court appoint HRS as tax administrator to execute all income tax reporting and payment requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund.

**B. The Court Should Appoint KCC as Distribution Agent for the Distribution Fund.**

The appointed distribution agent will, among other things, perform services in accordance with the pricing schedule and cost proposal submitted by the distribution agent to the SEC; work with the SEC to develop a distribution plan for submission for Court approval (the “Plan”); identify affected investors through the process set forth in the Plan; respond to investor and distribution related inquiries; quantify investor losses; assist the tax administrator in calculating a reserve for fees, expenses, and taxes (the “Reserve”); perform all activities necessary for the distribution of the Distribution Fund net the Reserve in accordance with the Plan; engage an independent, third-party firm, not unacceptable to the SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan approved by the Court; coordinate with the Court-appointed tax administrator to ensure timely compliance with all tax related obligations; provide periodic reports and declaration(s) as required by Court order; and comply with the Plan and all Court orders.

KCC is a member of a pool of administrators approved by the SEC for recommendation to courts in civil proceedings. It has an agreement with the SEC that if selected as the distribution agent, it will be bound by the terms of the distribution cost proposal that it submitted to the SEC staff in connection with this matter. The SEC’s recommendation of KCC is based on a process in which the SEC staff solicited, reviewed, and analyzed distribution cost proposals from prospective distribution agents, including a pricing schedule that will allow the SEC staff to monitor invoices and the costs of administering the distribution. KCC has represented that it does not have any conflicts of interest that would keep it from fully and fairly exercising its duties as the distribution agent for the Distribution Fund. If appointed by the Court, KCC will take

1 affirmative steps to ensure that any entities or individuals engaged by KCC also have no such  
2 conflicts of interest.

3 The SEC knows from its experience with KCC that it is qualified to perform all functions  
4 necessary to the administration of this action. KCC has years of experience in drafting and  
5 finalizing distribution plans, defining eligibility and the measure of damages, collecting and  
6 validating information from claimants, remitting payments, and handling all related audit, review  
7 and reporting processes. It is a full-service distribution administration and project management  
8 consulting firm, capable of performing the functions necessary to this administration.

9 If appointed, KCC will file, or provide to the SEC for filing with the Court, a quarterly  
10 status report within forty-five (45) days of Court approval of a distribution plan and will provide  
11 additional reports and quarterly account statements within thirty (30) days after the end of every  
12 quarter thereafter. Once the Distribution Fund has been transferred to an escrow account, KCC  
13 will include with its quarterly reports a quarterly accounting report in a format to be provided by  
14 the SEC. Upon completing its duties as distribution agent, KCC will work with the appointed tax  
15 administrator to prepare a final report and final accounting for filing with the Court.

16 C. **The Court Should Authorize the SEC Staff to Arrange for Payment of Tax**  
17 **Obligations and Administrative Fees and Expenses Without Further Court Order.**

18 To meet tax payment deadlines, avoid the assessment of late payment penalties, and  
19 make timely payment to the court-appointed tax administrator and distribution agent for services  
20 provided, the SEC further requests that SEC staff be authorized to approve and arrange for  
21 payment from the Distribution Fund of all tax obligations of the QSF, and fees and expenses of  
22 the tax administrator and distribution agent, without further Court order. The SEC staff follows  
23 a rigorous process for reviewing and approving invoices before payment is made. The SEC's  
24 Office of Distributions requires and reviews, in a multi-step process, detailed invoices from the

tax administrator and the distribution agent that describe the work performed, the billing rate, and the time expended on each task and compares the invoiced amounts to the agreed upon rates of the entity submitting the invoice. With respect to the distribution agent, the SEC staff also reviews the invoice to ensure that it remains within the limits of the approved cost proposal submitted by the distribution agent for this action. If the Court authorizes the SEC staff to approve and arrange for the payment of taxes and administrative fees and expenses without further Court order, the SEC staff will use its expertise in distributions and knowledge of this specific distribution to review all proposed charges. The SEC staff will approve and arrange for payment only of appropriate and properly documented taxes and administrative fees and expenses. All tax payments and administrative fees and expenses will be reported to this Court in the final accounting of the Distribution Fund once all Court authorized distributions have been completed.

#### IV. Conclusion

For all the foregoing reasons, the SEC respectfully requests that this Court enter the proposed Order submitted with the Motion and grant such other relief as the Court deems just and proper.

Dated: October 16, 2024

Respectfully submitted,

/s/Catherine E. Pappas

Catherine E. Pappas (Pa. Bar No.56544)

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

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SEC's Motion to Appoint a Tax  
Administrator, Distribution Agent,  
and Related Relief

*SEC v. Volkswagen AG*  
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**CERTIFICATE OF SERVICE**

I, Catherine E. Pappas, hereby certify that, on October 16, 2024, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of Northern District of California, using the electronic case filing system of the court. The electronic case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/Catherine E. Pappas  
Catherine E. Pappas

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**(Proposed) Order Appointing a Tax  
Administrator and a Distribution Agent  
and Authorizing the SEC to Approve and  
Arrange Payment of the Tax Obligations  
of the Distribution Fund and  
Administrative Fees and Expenses  
Without Further Court Order**

This Document Relates To:

*U.S. SEC v. Volkswagen AG*,  
No. 3:19-cv-1391 CRB

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“SEC”) for an Order: (1) appointing Heffler, Radetich & Saitta, LLP (“HRS”) as tax administrator for the funds under the Court’s jurisdiction in this matter (the “Distribution Fund”); (2) appointing KCC Class Action Services, LLC (“KCC”) as distribution agent for the Distribution Fund; and (3) authorizing the SEC to approve and arrange payment of the tax obligations, and all administrative fees and expenses of HRS and KCC, from the Distribution Fund without further Court Order (the “Motion”), and for good cause shown,

**IT IS HEREBY ORDERED:**

1. The Motion is **GRANTED**.

**Tax Administrator**

2. HRS is appointed Tax Administrator (the “Tax Administrator”) to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Distribution Fund.

[Proposed] Order Appointing a Tax  
Administrator, Distribution Agent,  
and Related Relief

*SEC v. Volkswagen AG*  
3: 19-cv-1391-CRB

1           3.       HRS shall be designated the Tax Administrator of the Distribution Fund, pursuant to  
2 Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations,  
3 and shall satisfy the administrative requirements imposed by those regulations, including but not  
4 limited to (a) obtaining a taxpayer identification number; (b) filing applicable federal, state, and local  
5 tax returns and paying taxes reported thereon out of the Distribution Fund; and (c) satisfying any  
6 information, reporting, or withholding requirements imposed on distributions from the Distribution  
7 Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC's counsel  
8 of record.

9           4.       The Tax Administrator shall comply with the distribution plan to be approved by  
10 this Court (the "Plan") and all Court orders;

11           5.       The Tax Administrator shall, at such times as the Tax Administrator deems  
12 necessary to fulfill the tax obligations of the Distribution Fund, submit a request to the SEC's  
13 counsel of record for payment from the Distribution Fund of any tax obligations of the Distribution  
14 Fund.

15           6.       The Tax Administrator shall be entitled to charge reasonable fees for tax  
16 compliance services and related expenses in accordance with its agreement with the SEC. The  
17 Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a  
18 request to the SEC's counsel of record for payment of fees and expenses from the Distribution  
19 Fund.

20           7.       The SEC is authorized to approve and arrange payment of all tax obligations owed  
21 by the Distribution Fund and the fees and expenses of the Tax Administrator from the Distribution  
22 Fund without further Court order. The Tax Administrator will submit notification of tax obligations,  
23 and invoices of all fees and expenses incurred in connection with its administration of the QSF to  
24 the SEC's counsel of record for review and, as appropriate, payment. All payments for taxes and the  
25 fees and expenses of the Tax Administrator shall be reported to the Court in a final accounting.

**Distribution Agent**

8. KCC is appointed distribution agent (the “Distribution Agent”) for the Distribution Fund, to oversee the administration and distribution of the Distribution Fund in coordination with the SEC’s counsel of record pursuant to the terms of the Plan. The Distribution Agent will, among other things:

- a) Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the SEC;
- b) Work with the SEC to develop the Plan;
- c) Identify harmed investors in accordance with the process set forth in the Plan;
- d) Respond to investor and distribution related inquiries;
- e) Quantify losses;
- f) Assist the Tax Administrator in calculating the Reserve;
- g) Perform all activities necessary for the distribution of the Distribution Fund net the Reserve in accordance with the Plan;
- h) Engage an independent, third-party firm, acceptable to the SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan approved by the Court;
- i) Coordinate with the Court-appointed Tax Administrator to ensure timely compliance with all tax related obligations; and
- j) Comply with the Plan and all Court orders;

9. KCC shall file with the Court or provide to the SEC’s counsel of record to file with the Court a quarterly status report within forty-five (45) days of Court approval of the Plan and provide additional reports within thirty (30) days after the end of every quarter thereafter. Upon establishing an escrow account into which the monies in the Distribution Fund are transferred, the Distribution Agent will include a quarterly accounting report, in a format to be provided by the SEC, in the status report. The status report will inform the Court and the SEC of the activities and

status of the Distribution Fund during the relevant reporting period and the quarterly accounting report will specify, at a minimum:

- a) The location of the account(s) comprising the Distribution Fund; and
- b) An interim accounting of all monies in the Distribution Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to eligible claimants under the Plan, and any monies expended from the Distribution Fund to satisfy fees, expenses, and taxes, incurred or required in the administration of the Distribution Fund or the implementation of the Plan.

10. The Distribution Agent shall be entitled to charge reasonable fees and related expenses incurred in the performance of its duties in accordance with the cost proposal submitted to the SEC. The Distribution Agent will submit invoices of all fees and expenses incurred in connection with its role as Distribution Agent to the SEC's counsel of record for review and, as appropriate, payment. The SEC is authorized to approve and arrange payment of the fees and expenses of the Distribution Agent from the Distribution Fund without further order of this Court. All payments will be reflected in a final accounting.

#### **Additional Provisions**

11. Upon completing their duties as set forth herein, the Tax Administrator, in consultation with the Distribution Agent, will jointly provide to the SEC's counsel of record a final accounting in a form provided by the SEC's counsel of record. The Distribution Agent will further provide to the SEC's counsel of record a final report providing statistics related to the distribution, including amounts disbursed to investors, amounts returned and/or not delivered or negotiated, outreach efforts on unnegotiated payments and the costs and results of the same, and statistics concerning payments made to individuals and entities; and an affidavit in a format acceptable to the SEC's counsel of record summarizing its activities as Distribution Agent.

12. The Distribution Agent and/or the Tax Administrator may be removed *sua sponte* at any time by the Court or upon motion of the SEC and replaced with a successor. In the event the Distribution Agent and/or the Tax Administrator decide to resign, the resigning entity must first give written notice to the SEC's counsel of record and the Court of its intention, and resignation, if permitted, will not be effective until the Court has appointed a successor. The resigning entity will then follow instructions from the Court or a successor for relinquishing its duties, including all records related to Distribution Fund monies and property. Unless otherwise ordered, the resigning entity will within 30 days of the notice of resignation or removal, file with the Court a final accounting and a report of its activities as further set forth above in paragraph 6, and provide any other information requested by the SEC, the Court, or the successor.

13. The Court will retain exclusive jurisdiction over the distribution.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2024

HONORABLE CHARLES R. BREYER  
United States District Judge